

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROBERT W. PRESTON,

Plaintiff,

v.

No. CIV-14-0278 KG/LAM

**CAROLYN W. COLVIN, Acting Commissioner
of the Social Security Administration,**

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on Magistrate Judge Lourdes A. Martínez' *Proposed Findings and Recommended Disposition* (Doc. 38) filed on August 14, 2015, which recommended granting in part and denying in part *Plaintiff's Opposed Motion for E.A.J.A. Award of Attorney's Fees and Costs* (Doc. 32). No party has filed objections to the *Proposed Findings and Recommended Disposition* (Doc. 38) and the deadline for filing objections has passed. The Court has determined that it will adopt the *Proposed Findings and Recommended Disposition* (Doc. 38) and grant in part and deny in part *Plaintiff's Opposed Motion for E.A.J.A. Award of Attorney's Fees and Costs* (Doc. 32).

IT IS THEREFORE ORDERED that the *Proposed Findings and Recommended Disposition* (Doc. 38) are **ADOPTED** by the Court.

IT IS FURTHER ORDERED that *Plaintiff's Opposed Motion for E.A.J.A. Award of Attorney's Fees and Costs* (Doc. 32) is **GRANTED in part** and **DENIED in part**, and Plaintiff's fee request is reduced by **\$380.00** so that Plaintiff is authorized to receive **\$7,858.00** in attorney

fees for payment to his attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

IT IS FURTHER ORDERED that, if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's attorney shall refund the smaller award to Plaintiff pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 596 n.4 (2010) (explaining that, if claimant's counsel is ultimately granted attorney fees under § 406(b) out of claimant's benefit award, claimant's attorney must refund to claimant amount of smaller fee).

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE